



INTERIOR BOARD OF INDIAN APPEALS

Maureen L. Secrest v. Crow Tribe of Montana

28 IBIA 98 (07/06/1995)

Related Board case:
28 IBIA 113



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

MAUREEN L. SECREST,
Appellant

v.

CROW TRIBE OF MONTANA,
Appellee

: Order Docketing Appeal, Dismissing Appeal
: in Part, and Affirming Decision in Part
:
:
: Docket No. IBIA 95-127-A
:
:
: July 6, 1995

Appellant Maureen L. Secrest has filed a protest against Tribal Resolution No. 95-18 enacted by the Crow Tribe of Montana (Tribe). The resolution, which adds a new Chapter 4 - Resort Tax to the Crow Tribal Taxation Code, was adopted by the Tribal Council on January 14, 1995, and approved by the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA) on June 9, 1995. Section 4.02 of the tax law states: "A tax is hereby imposed on the gross receipts from all goods and services sold or used on the Reservation in connection with a resort business." Appellant is the owner of a business called the Cowboy Shop, which would apparently be subject to the new resort tax.

Appellant's letter to the Board states in its entirety:

This letter is to notify you that I am protesting the Resort Tax passed by the Crow Tribe (Tribal Resolution Number 95-18 enacted January 14, 1995). I have no business deal with the tribe nor do I impact the tribe in any way. Under the law one of these two factors must be present. Also, Senator John McCain, Chairman of the Select Committee on Indian Affairs has indicated (with his former counsel Erik Eberhard) that it would be an illegal tax.

Attached to appellant's letter was a March 24, 1995, letter from Senator McCain to the Tribal Chairwoman, discussing tribal plans "to levy a real property tax on fee lands inside the reservation."

Appellant's letter shows that she is protesting either, or both, the Tribe's enactment of the tax or the application of the tax to her business. Although appellant's letter provides no evidence to support this assumption, for purposes of this discussion, the Board will assume that appellant is also protesting the Area Director's approval of the resolution.

The Board lacks jurisdiction over appellant's protest against the enactment of the resolution or the application of the tax to her business. The Board is not a court of general jurisdiction, but rather has only that

authority delegated to it by the Secretary of the Interior. It has jurisdiction to review BIA decisions issued under 25 CFR Chapter I; it does not have jurisdiction to review actions taken by duly constituted tribal governing bodies. See, e.g., Johnson v. Acting Phoenix Area Director, 25 IBIA 18, 27 n.9 (1993); Welmas v. Sacramento Area Director, 24 IBIA 264, 268 (1993), and cases cited therein. Although not entirely clear from the materials before the Board, it appears likely that appellant's protest against the enactment of the tax should be addressed to the Tribal Council and/or the Tribal Court, and that her arguments that the tax should not be applied to her business should be addressed to the Tribal Tax Commission and/or the Tribal Court.

To the extent appellant is seeking review of the Area Director's approval of the resolution, this Board has consistently and repeatedly upheld the jurisdiction of tribal courts and other appropriate tribal forums to resolve disputes with a tribe, and has deferred to tribal court jurisdiction when a BIA decision is secondary to a dispute with the tribe. See, e.g., Zinke & Trumbo, Ltd. v. Phoenix Area Director, 27 IBIA 105 (1995); Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79, 80 (1993) ("The Federal policy of respect for tribal courts, and of support for tribal self-government in general, counsels abstention by a Federal forum in a case in which a tribal forum has primary jurisdiction"). See also Middlemist v. Secretary of the Interior, 824 F. Supp. 940, 946-47 (D. Mont. 1993) ("[T]he authority of the Tribal Council to promulgate and enforce [a tribal ordinance] * * * is determinative of all of Plaintiff's claims, including the correctness of the BIA's approval and subsequent funding of the ordinance"), aff'd, 19 F.3d. 1318 (9th Cir.), cert. denied, 115 S.Ct. 420 (1994).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this protest against Crow Tribal Resolution 95-18 is docketed. To the extent appellant seeks review of the enactment of the resolution or its application to her business, the appeal is dismissed for lack of jurisdiction. To the extent appellant seeks review of the Area Director's approval of the resolution, the decision is affirmed in deference to the primary jurisdiction of the Tribe.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge